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7 **BEFORE THE**
8 **BOARD OF REGISTERED NURSING**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. *2011-983*

12 **KIMBERLY J. ARD**

A C C U S A T I O N

13 **2222 Cabin Drive**
14 **Florence, SC 29506**

15 **Registered Nurse License No. 757040**

Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., R.N. ("Complainant") brings this Accusation solely in her
19 official capacity as the Executive Officer of the Board of Registered Nursing ("Board"),
20 Department of Consumer Affairs.

21 2. On or about August 4, 2009, the Board issued Registered Nurse License Number
22 757040 to Kimberly J. Ard ("Respondent"). The Registered Nurse License was active at all times
23 relevant herein and will expire on November 30, 2012 unless renewed.

24 **JURISDICTION AND STATUTORY PROVISIONS**

25 3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
26 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
27 inactive license, for any reason provided in Article 3 (commencing with section 2750 of the
28 Code) of the Nursing Practice Act.

1 4. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
2 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
3 licensee or to render a decision imposing discipline on the license. Under Section 2811
4 subdivision (b) of the Code, the Board may renew an expired license at any time within eight
5 years after the expiration.

6 5. Sections 118 subdivision (b) of the Code also grants the Board jurisdiction over
7 suspended, expired, forfeited, cancelled, or surrendered licenses:

8 “The suspension, expiration, or forfeiture by operation of law of a license issued by a
9 board in the department, or its suspension, forfeiture, or cancellation by order of the
10 board or by order of a court of law, or its surrender without the written consent of the
11 board, shall not, during any period in which it may be renewed, restored, reissued, or
12 reinstated, deprive the board of its authority to institute or continue a disciplinary
proceeding against the licensee upon any ground provided by law or to enter an order
suspending or revoking the license or otherwise taking disciplinary action against the
licensee on any such ground.”

13 6. Section 2761 of the Code provides grounds for disciplinary action:

14 “The board may take disciplinary action against a certified or licensed
15 nurse or deny an application for a certificate or license for any of the following:

16 (a) Unprofessional conduct, which includes, but is not limited to, the
17 following:

18 (4) Denial of licensure, revocation, suspension, restriction, or any other
19 disciplinary action against a health care professional license or certificate by another
20 state or territory of the United States, by any other government agency, or by another
California health care professional licensing board. A certified copy of the decision
or judgment shall be conclusive evidence of that action.”

21
22 7. Section 2762 of the Code provides that certain conduct relating to controlled
23 substances constitutes unprofessional conduct:

24 “In addition to other acts constituting unprofessional conduct within the meaning of
25 this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
licensed under this chapter to do any of the following:

26 (a) Obtain or possess in violation of law, or prescribe, or except as
27 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
himself or herself, or furnish or administer to another, any controlled substance as
defined in Division 10 (commencing with Section 11000) of the Health and Safety
28 Code or any dangerous drug or dangerous device as defined in Section 4022.

1 (b) Use any controlled substance as defined in Division 10 (commencing
2 with Section 11000) of the Health and Safety Code, or any dangerous drug or
3 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or
4 in a manner dangerous or injurious to himself or herself, any other person, or the
5 public or to the extent that such use impairs his or her ability to conduct with safety to
6 the public the practice authorized by his or her license.

7 (c) Be convicted of a criminal offense involving the prescription,
8 consumption, or self-administration of any of the substances described in
9 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
10 record pertaining to, the substances described in subdivision (a) of this section, in
11 which event the record of the conviction is conclusive evidence thereof.

12 (d) Be committed or confined by a court of competent jurisdiction for
13 intemperate use of or addiction to the use of any of the substances described in
14 subdivisions (a) and (b) of this section, in which event the court order of commitment
15 or confinement is prima facie evidence of such commitment or confinement.

16 (e) Falsify, or make grossly incorrect, grossly inconsistent, or
17 unintelligible entries in any hospital, patient, or other record pertaining to the
18 substances described in subdivision (a) of this section.”

19 COST RECOVERY

20 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
21 administrative law judge to direct a licentiate found to have committed a violation or violations of
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
23 enforcement of the case.

24 CONTROLLED SUBSTANCES

25 9. Oxazepam is a depressant designated as a Schedule IV controlled substance by Health
26 and Safety Code section 11057(d) and is a dangerous drug pursuant to Business and Professions
27 Code section 4022.

28 10. Temezepam is a depressant designated as a Schedule IV controlled substance by
Health and Safety Code section 11057(d) and is a dangerous drug pursuant to Business and
Professions Code section 4022.

11. Amphetamine is a stimulant designated as a Schedule II controlled substance by
Health and Safety Code section 11055(d) and is a dangerous drug pursuant to Business and
Professions Code section 4022.

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12. Oxymorphone is a narcotic designated as a Schedule II controlled substance by Health and Safety Code section 11055(b)(1) and is a dangerous drug pursuant to Business and Professions Code section 4022.

13. Oxycodone is a narcotic designated as a Schedule II controlled substance by Health and Safety Code section 11055(b)(1) and is a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Disciplinary Action by the South Carolina Board of Nursing)

14. Respondent is subject to discipline pursuant to Section 2761 subdivision (a)(4) of the Code on the grounds of unprofessional conduct because she was disciplined by the South Carolina Board of Nursing ("South Carolina Board"), as follows:

15. On or about November 9, 2009, the South Carolina Board issued an Order of Temporary Suspension in the disciplinary action entitled, *In the Matter of: Kimberly Jeanine Ard, R.N.* In this disciplinary action, the South Carolina Board ordered Respondent's license temporarily suspended, effective immediately, until further Order of the Board.

16. The South Carolina Board's 2009 disciplinary action occurred because on or about January 2009, Respondent, while working as a night shift charge nurse in the Carolinas Hospital System, had diverted controlled substances, including narcotics, from her employer by falsifying medical records and patient records. When her employer tested her for drug use at a drug screening at the hospital, Respondent tested positive for Oxazepam (an anti-anxiety medication), Temazepam (an anti-insomnia medication that produces drowsiness), Amphetamine (a stimulant), Oxycodone (a narcotic used to treat moderate to severe pain), and Oxymorphone (another narcotic used to treat moderate to severe pain.)

17. Under Section 2761 subdivision (a)(4) of the Code, the South Carolina Board's disciplinary action against Respondent for diverting prescription drugs for her own use and for falsifying patient records is ground for the California Board to take disciplinary action.

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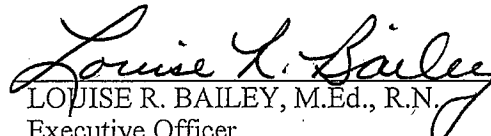
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1.3. Taking such other and further action as deemed necessary and proper.

DATED:

June 13, 2011


LOUISE R. BAILEY, M.Ed., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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